



PERMITTING STORMWATER DISCHARGES FROM FEDERAL FACILITY CONSTRUCTION PROJECTS

Audience: This fact sheet is for federal facility managers responsible for meeting the requirements of the National Pollution Discharge Elimination System (NPDES) stormwater program.

Purpose: This fact sheet outlines the requirements for obtaining permit coverage for stormwater discharges from federal facility construction projects and clarifies the role of federal facility managers as co-permittees on construction projects.

WHEN IS A STORMWATER PERMIT REQUIRED FOR CONSTRUCTION?

Permit coverage must be obtained for stormwater discharges from construction activities which disturb one acre or more of land and for smaller projects that are part of a larger, common plan.

WHAT IS A FEDERAL FACILITY?

A federal facility is any building, installation, land, etc. owned or leased by the federal government.

Most states are authorized to implement the NPDES stormwater program, however, there are a number of states and territories where EPA is the permitting authority for federal facilities, including: New Hampshire, Massachusetts, Idaho, New Mexico, Alaska, Colorado, Washington, Delaware, Vermont, Puerto Rico, the District of Columbia, and many of the territories. For a complete list, see www.epa.gov/npdes/stormwater/cgp or Appendix B of EPA's Construction General Permit. EPA's Construction General Permit is an "umbrella permit" covering many areas. Applicants must apply for coverage under this permit by submitting a Notice of Intent (NOI) form. This form can be submitted electronically by using EPA's new online systems available at www.epa.gov/npdes/stormwater/enoi.

WHO NEEDS TO APPLY FOR PERMIT COVERAGE?

Operators must apply for coverage under EPA's Construction General Permit. EPA defines operators as either the entity that has operational control over either the construction plans and specifications, including the ability to make modifications to those plans and specifications (e.g., owner or developer of project), or the entity that has day-to-day operational control of those activities at a project which are necessary to ensure compliance with a stormwater pollution prevention plan (e.g., general contractor). There may be several entities that meet the definition of operator for a given construction project and each should obtain permit coverage. Construction activities on federal facilities are often performed through a contract. If the federal agency and the contractor share responsibility for the plans and specifications or day-to-day operations of the site then both would need to apply for permit coverage. In this scenario, both

operators would be issued a separate permit number. Therefore it is recommended that the same site name be used in both permit applications. This enables the permitting authority to more effectively associate each of the permits at a construction site. Often times, a federal agency (e.g., General Services Administration or the Army Corps of Engineers) will be considered to be an operator at a federal facility where they are not the primary tenant. Where this is true, the federal agency with operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications (e.g., GSA or the Corps), must obtain permit coverage.

WHO SIGNS THE NOTICE OF INTENT FORM?

EPA requires that a company officer or high ranking official sign and certify the Notice of Intent Form. For a federal agency, the certifying official is a principal executive officer or ranking elected official. A principal executive officer of a federal agency includes (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrator of the Fish and Wildlife Service). For NOIs submitted electronically (where the certifying official has to “sign” on-line, and for federal agencies that will be submitting several NOIs over time, the principal executive operator may want to delegate signatory responsibility to either a named person or a person occupying a named position. The process for delegating signatory authority is further described in 40 CFR 122.22(b).

IF THERE ARE MULTIPLE OPERATORS AT A SITE, WHO IS RESPONSIBLE FOR PERMIT COMPLIANCE?

Both parties are responsible for permit compliance. In the event of an inspection, the activities of all operators would be considered. The pollution prevention plan should clearly indicate how responsibilities are divided. .

TIPS FOR FEDERAL FACILITIES:

- ✓ Provide contractors with any relevant information related to historical, cultural, or biological resources which may be affected by the project.

A federal facility operator may have intimate knowledge of specific reports or guidance that outlines critical resources that need to be protected at a site. Examples of these may include biological assessments for endangered species, plans for protecting historic properties, delineations of underground sources of drinking water which could be impacted by surface water impoundments, wetland delineations, and requirements set forth in a TMDL (Total Maximum Daily Load) implementation plan. Communicating this information with contractors prior to approving a pollution prevention plan will help ensure that critical resources are not negatively impacted by the project.

- ✓ Include stormwater provisions in federal contracts for construction

Whenever possible, contracts for work on Federal land should include requirements for the management of stormwater. At a minimum, such language should include provisions that ensure that the contractor obtains permit coverage for their stormwater discharges, complies with the terms of the SWPPP, and inspects the site on a regular basis. Including language about permit compliance directly into bids for construction activities helps assure that contractors understand their role in preventing pollution in stormwater runoff.

✓ Update the SWPPP as needed

A pollution prevention plan is a living document that should be updated as a project progresses. Often times, only the project owner has the ability to update the SWPPP. Therefore, the site owner needs to make sure that the SWPPP is sufficient to cover each of the activities being performed at a given site.

✓ Train staff to recognize problems at construction sites

If there are personnel at a facility who regularly drive by a site or have other duties within that site, train them to recognize problem areas for compliance with a stormwater permit. Are silt fences trenched and keyed properly? Is there evidence of tracking large amounts of sediment off site? Is there a designated area for concrete truck washout? Are there any oil sheens present at the site? Are stormwater inlets adequately protected? Answering a few simple questions can go a long way in ensuring permit compliance and effective protection of adjacent streams and lakes.

✓ Maintain effective communication with contractors

It is important to keep regular communication with contractors. If there is a problem with the way a site is being managed, the site owner should have a list of contacts with whom they can communicate their concerns with.

FOR MORE INFORMATION...

EPA's NPDES Web Site:

<http://www.epa.gov/npdes>

**Construction Industry Compliance
Assistance Center:**

<http://www.cicacenter.org>

Notice: The statements in this document are intended solely as guidance to aid regulated entities in complying with the Clean Water Act's stormwater requirements. The guidance is not a substitute for reading the Clean Water Act and its implementing regulations and understanding all its requirements as they apply to your facility. This guidance does not constitute rulemaking by the EPA and may not be relied on to create a substantive or procedural right or benefit enforceable, at law or in equity, by any person. EPA may decide to update this guide without public notice to reflect changes in EPA's approach to implementing the Clean Water Act. This document reflects information available in EPA's NPDES General Permit for Stormwater Discharges from Large and Small Construction Activities.